

# INMM SPENT FUEL XXVIII



Jay Silberg  
Pillsbury Winthrop Shaw Pittman LLP

*Spent Fuel Management Issues  
The Lawyer's View*

January 15, 2013

# Introduction

---

- From inside Yucca Mountain to inside the Beltway
- After spending \$7.5 billion on Yucca Mountain, it's back to the beginning
- The DOE civilian radioactive waste program may be dead, but the legal consequences have a longer half-life

# Demise of the Old Strategy – Government Liability

---

- Current DOE estimate of Government liability – \$22.3 billion
  - Based on unknown assumptions
  - Probably very conservative
- Government damages yet to be paid - \$19.7 billion
  - Reflects Government payments to utilities through Sept. 30, 2012

# Legal Consequences of the Demise

---

- Breach of Contract
  - 1998 obligation – “Here’s air; give me money”
  - 74 lawsuits seeking breach of contract damages
  - 31 lawsuits settled
    - \$1.92 billion paid as of 9/30/12
  - 16 lawsuits resolved through the courts
    - \$679 million paid as of 9/30/12
  - 27 lawsuits pending

# DOE's New Strategy

---

- Buzzword Based – “Consent-based, transparent, phased, adaptive, standard- and science-based”
- Requires legislative fix – “engaging Congress”
- Goal of repository by 2048
  - Silver anniversary of DOE breach
- In the meanwhile, DOE's goals
  - pilot interim storage for shutdown plants (2021)
  - larger centralized interim storage (2025)
  - repository site selection (2026)
- New organization

# Fee Adequacy

---

- DOE obligation to annually review Nuclear Waste fee to match fee with program costs
- NARUC and NEI efforts to rein in fee collection absent a program
- D.C. Circuit response
  - DOE's interpretation "unacceptable", "farfetched, almost absurd", "legally inadequate", "legally defective"
  - "Irrationality" of DOE's choosing Yucca Mountain as a proxy
  - DOE cost estimate "unfortunately, and somewhat embarrassingly, inflated"
- DOE obligation to submit a legally adequate fee adequacy report by January 18, 2013.

# *Aiken County* Lawsuits

---

- Litigation to force DOE, NRC to continue Yucca Mountain licensing
- 2011 D.C. Circuit decision that challenging DOE attempt to withdraw Yucca Mountain application premature
  - NRC hadn't acted on DOE motion to withdraw application; NRC hadn't ruled on application
  - “the deadline for the Commission to act is at hand”
  - Concurring opinion – failure to change NRC obligation “may snatch defeat from the jaws of victory”
  - Dissenting opinion – “This case is a mess”

# *Aiken County* Lawsuits

---

- 2012 D.C. Circuit decision on challenge to NRC failure to meet 3 year Yucca Mountain licensing deadline
    - Decision “in abeyance” pending status of 2013 appropriations
    - Concurring opinion –
      - NRC appears to have funding; in those circumstance, an agency appears to have no legal authority to defy the law
    - Dissenting opinion –
      - “there is no reason to delay issuing a writ of mandamus to correct this transparent violation of the law.”
      - “former [NRC] Chairman Jaczko orchestrated a systematic campaign of noncompliance
  - Awaiting DC Circuit ruling after recent filings on funding status
  - NRC could be ordered to spend remaining \$15 million to complete safety studies
-



Jay Silberg  
Pillsbury Winthrop Shaw Pittman LLP

*Questions? Please contact me:*

*[jay.silberg@pillsburylaw.com](mailto:jay.silberg@pillsburylaw.com)*

*202.663.8063*

January 15, 2013